

GAHC010018282016



**THE GAUHATI HIGH COURT**  
**(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

**Case No. : WP(C)/3589/2016**

AJIT DAS  
S/O LT. HARESH BEHARI DAS R/O VIVEKANANDA PATH ODAL-BKRA, LL  
GANESH P.O. ODAL BAKRA, P.S. DISPUR, GUWAHATI, DIST. KAMRUP  
METRO, ASSAM.

VERSUS

THE STATE OF ASSAM and 2 ORS.  
THROUGH THE COMMISSIONER-SECRETARY, FINANCE DEPARTMENT,  
P.O. ODAL -BAKRA, P.S. DISPUR, GUWAHATI.

2:THE SECRETARY  
FINANCE ESTABLISHMENT -B DEPARTMENT  
GOVT. OF ASSAM  
DISPUR  
GUWAHATI-6.

3:THE STATE ENQUIRY OFFICER  
ASSAM  
ASSAM SECRETARIAT CIVIL DISPUR  
GUWAHATI-6

**Advocate for the Petitioner : MR.B CHAKRABORTY**  
**Advocate for the Respondent :**

**BEFORE**  
**HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA**

**Date : 21-02-2023**

**JUDGMENT & ORDER (ORAL)**

Heard Mr. KN Choudhury, learned senior counsel for the petitioner and Mr. B Gogoi, learned counsel for the respondents in the Finance Department of the

Government of Assam.

2. The petitioner, who was serving as a Treasury Officer in the Ramkrishna Nagar Sub Treasury was departmentally proceeded as per the show cause notice dated 08.03.2000. Upon being dissatisfied with the reply given by the petitioner to the show cause notice, an enquiry was initiated by appointing Sri Benoy Kumar Bhattacharjee, Director of Accounts and Treasuries, Assam as an enquiry officer as per the order dated 03.06.2000 under Rule 9(4) of the Assam Services (Discipline and Appeal) Rules, 1964 (in short Rules of 1964) to enquire against the charges against the petitioner.

3. The petitioner participated in the enquiry process, but it was not brought to its logical end. In the meantime, by the notification impugned dated 17.05.2016, the Commissioner and Secretary to the Government of Assam in the Finance Department had appointed the State Enquiry officer, Assam as the enquiry officer to enquire into the charges against the petitioner in respect of the same show cause notice dated 08.03.2000 by providing that the appointment was again under Rule 9(4) of the Rules of 1964. Being aggrieved, this writ petition is instituted.

4. There is an interim order restraining the respondents from proceeding with the enquiry through the newly appointed enquiry officer being the State Enquiry officer, Assam as per the notification dated 17.05.2016.

5. The question that has arisen before the Court is when an enquiry process had been initiated and carried forward to a certain extent, whether a new enquiry officer can be appointed to replace the earlier enquiry officer and if yes, under what circumstance.

6. In this respect, reference is made to the pronouncement of the Hon'ble

Supreme Court rendered in K.R Deb –vs- The Collector of Central Excise, Shillong, reported in (1971) 2 SCC 102, wherein in paragraph 12 it has been provided that if in a particular case, there has been no proper enquiry because of some serious defect that may have crept into the enquiry or some important witnesses were not available at the time of enquiry or were not examined for some other reason, the disciplinary authority may ask the enquiry officer to record further evidence, but there is no provision under the Rules in force in the said proceeding for completely setting aside the previous enquiries on the ground that the report of the enquiry officer or officers does not appeal to the disciplinary authority.

7. In the instant case, although it is not a case where the report of the enquiry officer is sought to be ignored by appointing another enquiry officer because such report is not appealing to the disciplinary authority, but at the same time, by replacing the earlier enquiry officer by another enquiry officer without any reasonable cause and without circumscribing the role of the subsequent enquiry officer, the implication thereof would also be that the part of the proceeding conducted by the earlier enquiry officer would be obliterated and there may be a de-novo enquiry. The circumstance under which a de-novo enquiry can be ordered is circumscribed by law and it has not been pointed out by the respondents in any manner that in the instant case such circumstances were satisfied in order to appoint a new enquiry officer by ignoring the proceeding that were already initiated by the earlier enquiry officer.

8. Accordingly, the notification dated 17.05.2016 appointing the State Enquiry officer is set aside and the respondents may continue with the enquiry proceeding as per the earlier appointed enquiry officer as per the order dated 03.06.2000. If because of passage of time, for any reason, the respondents are

of the view that the said enquiry officer would be disabled to continue with the enquiry, in such circumstance alone, a new enquiry officer may be appointed. But the new enquiry officer shall continue from the stage where the enquiry proceeding remained inconclusive as per the earlier enquiry officer.

9. We have also taken note that the petitioner in the meantime had been promoted twice and the respondents had not resorted to the sealed cover method even to deny the promotion to the petitioner.

10. Considering the matter in its entirety, the respondents are directed to complete the proceeding against the petitioner within a period of four months from the date of receipt of the certified copy of this order and in doing so, all the required procedure under Rule 9 of the Rules of 1964 shall be followed.

11. Mr. B Gogoi, learned counsel for the respondents states that the enquiry officer as well as the presenting officer had in the meantime been retired from the service.

12. Under the law, the enquiry officer is appointed for the purpose of conducting an enquiry and it may not be co-terminus with his regular service. The respondents may act accordingly.

The writ petition is allowed to the extent as indicated above.

**JUDGE**

**Comparing Assistant**